

# UNITED STATES PATENT AND TRADEMARK OFFICE

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| <b>Inventor(s):</b> Neal A. Hammond | <b>Examiner:</b> WONG, Leslie     |
| <b>Appln. No.:</b> 10/796,786       | <b>Group Art Unit:</b> 1794       |
| <b>Filing Date:</b> March 9, 2004   | <b>Confirmation No.:</b> 1672     |
| <b>Title:</b> LOW SUGAR HONEY       | <b>Customer No.:</b> 25764        |
|                                     | <b>Docket No.:</b> 83285 - 376263 |

Mail Stop APPEAL BRIEF - PATENTS  
Commissioner for Patents  
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Alexandria, VA 22313-1450

I CERTIFY THAT THIS PAPER (ALONG WITH ANY REFERRED TO AS BEING ATTACHED OR ENCLOSED) IS BEING TRANSMITTED TO THE COMMISSIONER FOR PATENTS, P. O. BOX 1450, ALEXANDRIA, VA 22313-1450 ON JANUARY 27, 2011, VIA THE USPTO-EFS-WEB FILING SYSTEM.

/Sue Meyer/

## SECOND CORRECTED APPEAL BRIEF

This communication is responsive to the Notification of Non-Compliant Appeal Brief mailed on December 27, 2010. No fee is believed to be necessary. Should any fee be required, the Commissioner is authorized to charge our Deposit Account No. 06-0029 and notify us of the same.

### Correction of the Grounds of Rejection to be Reviewed on Appeal:

Please insert the following in the "Grounds of Rejection to be Reviewed on Appeal" section after *Ground of Rejection 5*:

*Ground of Rejection 6*: Whether the specification fails to provide adequate written description the phrase "contains no added fructose" recited in independent Claim 39.

*Ground of Rejection 7*: Whether the language of independent Claim 39 "wherein the honey present in the composition consists of natural honey and contains no added fructose" is clear.

### Correction of the Argument:

Please insert the following at the end of the "Argument" section:

***Ground of Rejection 6: Rejection of Claim 39-40 Under 35 U.S.C. § 112 as lacking written description for the phrase “contains no added fructose”***

Support for the claim recitation “contains no added fructose” is found throughout the specification and Examples. Exemplary honey compositions demonstrated in the working Examples 1-5 were produced using three ingredients: natural honey, one of the recited non-metabolizable or slowly-metabolizable extender molecules, and water.

It is commonly known and is disclosed in the Background at page 1, lines 17-21, that natural honey contains fructose and glucose, two sugars that are readily metabolizable when consumed by humans. The Summary of the Invention at page 2, lines 18-20 describes the inventive composition as “low in total sugar content... as compared with natural honey.” The extender molecules are stated in the Summary at lines 23-25, to be “slowly-metabolized as compared with sugars or non-metabolized in the human digestive system”. Specific extender molecules useful in the invention are listed at pages 3-4. The specification at page 4, lines 7-12 states:

The compositions of the present invention are reduced in sugar, including both glucose and fructose content, as compared with natural honey. Preferably, the compositions contain less than 25% by weight of glucose and fructose...

The purpose of the invention as recited in the specification as discussed above is to ***reduce*** the amount of metabolizable sugar (fructose and/or glucose) in the honey composition while maintaining the organoleptic qualities of natural honey. To add fructose to the compositions would be contrary to the stated purposes of the invention, and would increase rather than decrease the sugar present in the composition.

The words of the specification clearly identify that the Applicant’s composition as described and claimed are intended to be lower in the highly metabolizable sugars glucose and fructose due to the addition of non-metabolizable or only slowly metabolizable extender molecules. Further, the specification is not required to contain the exact word recited in the claim if they are understood by one skilled in the art.

“If a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met. See, *e.g.*, *Vas-Cath*, 935 F.2d at 1563, 19 USPQ2d at 1116; *Martin v. Johnson*, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA 1972) (stating "the description need not be in *ipsis verbis* [i.e., "in the same words"] to be sufficient") (2163 Guidelines for the Examination of Patent Applications Under the 35 U.S.C. 112, para. 1, "Written Description" Requirement [R-5])

Applicants submit the specification clearly provides adequate description of an extended honey composition that does not contain added fructose.

***Ground of Rejection 7: Rejection of Claim 39-40 Under 35 U.S.C. § 112 as lacking clarity in the claim phrase “wherein the honey present in the composition consists of natural honey and contains no added fructose”***

The Examiner asserts that “it is not clear whether Applicant intends that natural honey contains no added fructose or that the claimed invention contains no added fructose”. The Applicant’s representative agrees the claim was intended to recite the phrase “and ***the composition*** contains no added fructose”, in parallel with the language of independent claims 41 and 42 .

CONCLUSION

The Appellant respectfully requests that the Board reverse the outstanding rejections of the foregoing claims and instruct the Examiner to issue a Notice of Allowance of all pending claims.

Respectfully submitted,

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